



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 29 1994

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Ms. Amy Norgren Salfi
Associate Project Director
RCRA/UST, Superfund and EPCRA Hotline
Booz Allen & Hamilton Inc.
Crystal Square 2, Suite 1100
1725 Jefferson Davis Highway
Arlington, VA 22202-4162

Dear Amy:

This letter responds to your letter of August 18, 1994. In your letter you ask for interpretations to help answer questions from Hotline callers about the applicability of requirements in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to disposal of mercury-containing lamps and PCB-containing ballasts. The following addresses each of your questions.

Definition of release: abandonment or discarding of closed receptacles containing a hazardous substance, such as light ballasts or lamps

Your first question refers to the fact that the CERCLA definition of the term release includes the abandonment or discarding of closed receptacles containing any hazardous substance (CERCLA section 101(22)). EPA has determined that under this definition the disposal of ballasts containing PCBs, regardless of whether they are leaking, requires CERCLA notification if the one pound RQ for this substance has been exceeded. In response to a 1992 inquiry about the disposal of light ballasts, EPA said that "moving one pound or more of PCBs in the form of light ballasts from one place to another place that is in the environment would trigger the CERCLA reporting requirement." You ask for clarification of this statement, which is of great interest to Hotline callers in the process of upgrading their ballasts, because it could mean that the act of removing the old ballasts (or lamps), before any disposal occurs, would trigger CERCLA reporting any time one pound of PCB has been moved in a 24-hour period.



Recycled/Recyclable
Printed with Soy Canola Ink on paper that
contains at least 50% recycled fiber

Answer:

We hope the following will remove uncertainty reflected in Hotline queries about the Agency's earlier explanation of how these provisions of CERCLA 101(22) apply to the removal of old ballasts and lamp bulbs.

As defined in CERCLA section 101(22), the term "release" encompasses (among other things) "...the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance...." Because light bulbs and light ballasts may contain mercury, PCBs, or other CERCLA hazardous substances, the abandonment or discarding of such closed receptacles containing hazardous substances could constitute a release under CERCLA. Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its reportable quantity (RQ) must immediately notify the National Response Center (NRC) of the release.

If light ballasts or lamp bulbs are abandoned or discarded into the environment (e.g. in the course of being moved) and they contain a hazardous substance such as PCBs (in the case of ballasts) or mercury (in the case of lamps), then a release has occurred. This release must be reported to the NRC if the amount released exceeds the applicable RQ. If ballasts, bulbs, or both are moved without being abandoned, discarded, or otherwise released, no reportable event has occurred.

**Disposal in a Resource Conservation and Recovery Act (RCRA)-
Permitted Hazardous Waste Management Facility**

This question relates to the EPA guidance document entitled Lighting Waste Disposal. The document, issued by EPA's Office of Air and Radiation (OAR), states (p.8) that CERCLA requires building owners and waste generators to notify the NRC if they dispose of lamps containing one pound or more of mercury in a 24-hour period. Disposal of these lamps is regulated by RCRA if the Toxicity Characteristic Leaching Procedure yields an extract with mercury concentrations exceeding 0.2 milligrams per liter. Lamps that are being discarded and exhibit the toxicity characteristic for mercury must be disposed in a RCRA-permitted facility. Therefore, these lamps would generally be disposed in a RCRA permitted hazardous waste landfill. The OAR document does not mention that disposal of a hazardous substance at a RCRA-permitted facility in compliance with EPA regulations does not require notification under CERCLA (April 4, 1985; 50 FR 13461). You therefore seek confirmation that this is EPA's current position.

Answer

It is EPA's interpretation that disposal of a hazardous substance at a RCRA-permitted facility in compliance with applicable regulations does not require notification under CERCLA. EPA has established an administrative exemption from CERCLA notification requirements for the disposal of lamps at a hazardous waste facility regulated under the relevant portion (Subtitle C) of RCRA. As stated at 50 FR 13461 (April 4, 1985), the exemption provides that "...disposal of hazardous substances at a disposal facility in accordance with EPA regulations is not subject to CERCLA section 103 notification provisions. Where the disposal of wastes into permitted or interim status facilities is properly documented through the RCRA manifest system and RCRA regulations are followed, notification under CERCLA does not provide a significant additional benefit, so long as the facility is in substantial compliance with all applicable regulations and permit conditions."

Releases that qualify for this administrative reporting exemption would still be subject to CERCLA's liability and response provisions. Specifically, parties responsible for a release or threat of a release of a CERCLA hazardous substance may be subject to liability for response costs and natural resource damages under CERCLA section 107. Such parties also may be required by EPA under CERCLA section 106 to abate an imminent and substantial endangerment to the public health or welfare or the environment.

Disposal in a Municipal Solid Waste Landfill

This question grows out of the fact that modern municipal solid waste landfills, regulated under RCRA Subtitle D, are now becoming more protective of the environment because the October, 1991, comprehensive municipal solid waste landfill criteria are now being implemented nationwide (40 CFR Part 258). On behalf of callers, Hotline would like to know whether this means that disposal of lamps into a RCRA Subtitle D municipal solid waste landfill, in compliance with the new Part 258 requirements, would trigger CERCLA reporting. This question is particularly relevant now, because of a new EPA proposal which may exclude mercury containing lamps from hazardous waste regulations. (Under RCRA, lamps that do not exhibit the characteristics of RCRA hazardous waste, may be disposed in a RCRA subtitle D municipal solid waste landfill in accordance with State or local solid waste regulations. Traditionally, such disposal triggers CERCLA notification, since such lamps may contain CERCLA hazardous substances, and placing a hazardous substance in a municipal landfill constitutes a 'release' under CERCLA section 101(22)).

Answer

New RCRA Subtitle D criteria for municipal solid waste landfills were promulgated in 1991. The Office of Solid Waste recently proposed a rule (59 FR 38288, July 27, 1994) that would, under one option, exempt mercury-containing lamps from RCRA Subtitle C regulations, thereby possibly allowing the disposal of the lamps in Subtitle D landfills. EPA has neither made nor proposed changes to the CERCLA program, however, that would exempt the disposal of lamps in Subtitle D landfills from the notification, liability, or response provisions of CERCLA. Currently, disposal of mercury-containing lamps into a Subtitle D landfill is subject to these CERCLA requirements because: (1) the landfill is part of the environment; (2) the release is not federally permitted; and (3) EPA has not established an administrative reporting exemption for this type of release.

Disposal in a Toxic Substances Control Act (TSCA)-Permitted Landfill

The previously mentioned Green Lights document states that under CERCLA owners or operators of facilities must notify the NRC when disposing of a pound or more of PCBs in a 24-hour period. You ask whether disposal of PCB-containing ballasts at a TSCA-permitted landfill would require such CERCLA notification, or whether the disposal is exempt from notification as a federally permitted release. Under CERCLA section 103(a) federally permitted releases do not have to be reported to the NRC. However, the definition of federally permitted release found at CERCLA section 101(10) does not include facilities permitted under TSCA. In the July 19, 1988, Federal Register, EPA proposed in a rule for federally permitted releases to administratively relieve generators of PCB wastes from CERCLA section 103 notification if the wastes are disposed into a TSCA-approved facility (53 FR 27278). This proposed rule has never been finalized. As a result, generators who dispose of ballasts containing PCBs into a TSCA-permitted landfill are unsure of their reporting obligations under CERCLA section 103(a).

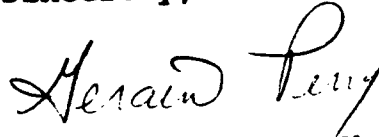
Answer:

Disposal of ballasts at a TSCA-permitted landfill would have to be reported as required under CERCLA section 103(a). Such disposals are not federally permitted under CERCLA section 101(10). EPA has proposed (53 FR 27278, July 19, 1988) to establish an administrative reporting exemption under CERCLA for the disposal of PCB wastes into facilities approved under and operating in compliance with TSCA. However, because the Agency has not yet promulgated this administrative exemption in a final rule, it does not currently apply to the disposal of PCB-containing light ballasts at TSCA-permitted landfills.

- 5 -

We hope you find this information helpful. If you have any questions about it, please call me on (703) 603-8732 or Bob Cattell at (703) 603-9054.

Sincerely,

A handwritten signature in cursive script, reading "Gerain H. Perry". The signature is written in dark ink and is positioned above the typed name.

Gerain H. Perry, Chief
Response Regulations Development Section